

Exhibit A

(Part 2 of 2)

1 Szele
2 on really the question. I'm sorry.
3 Q. You testified at some length about a
4 bunch of violations that Gia and Dan were the
5 only ones that knew about prior to December of
6 '06. My question to you now is, can you identify
7 any harm to IAM from those violations?
8 A. Sure. The harm doesn't have to occur
9 then. It can occur later.
10 Q. I don't care when it occurred. I don't
11 care what century it occurred. I want to know if
12 you can identify any such alleged harm.
13 A. I think it is harmful.
14 Q. Beyond thinking it is harmful, can you
15 identify any actual harm to IAM from these
16 alleged violations?
17 A. Essentially the potential of not
18 getting investors. That's all I can think of.
19 Not getting investors from this is a big
20 possibility.
21 Q. Besides the potential of not getting
22 any investors, can you identify any other harm?
23 A. I'd have to just think about it
24 further.
25 Q. Can you identify --

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1 Szele
2 A. I would have to think about it further.
3 I can't --
4 Q. Can you identify now --
5 A. I can't grasp this right now. I cannot
6 sit here and tell you exactly what I think about
7 that. I would have to think about it.
8 Q. Good.
9 A. I am not even really clear on the
10 question in terms of what you are asking I think.
11 Q. Let me ask it again if you are not
12 clear. If you are really not clear. Are you
13 really not clear on my question?
14 A. Not only do I think I am not clear, but
15 I think I can't answer that without thinking
16 about it more than two seconds.
17 Q. Let me pose the question just so we are
18 clear. If you can't answer it now, tell me you
19 can't answer it now.
20 A. Okay.
21 Q. You testified about a bunch of alleged
22 violations of rules and regulations that were
23 known only to Dan and Gia until the end of 2006.
24 A. Right.
25 Q. My question to you is, can you identify

1 Szele
2 any alleged harm to IAM as a result of those
3 alleged violations?
4 A. I'd have to think about it.
5 Q. You cannot answer --
6 A. I cannot answer that question. It may
7 be clear, but in my mind it is not really
8 understood exactly what you are asking. I don't
9 feel comfortable answering it.
10 Q. Okay. Could you tell me what potential
11 investors you talked to in 2006 concerning
12 investing in the Fund?
13 A. I would have to go through e-mails.
14 There is many.
15 Q. How many?
16 A. I have no idea. Many.
17 Q. Can you identify any one of them?
18 A. If I had my computer, I could identify
19 it. You want a name?
20 Q. A name. Any kind of information you
21 can provide us.
22 A. Richard Lombardi I talked to.
23 Q. Who is he?
24 A. A guy in the hedge fund business. A
25 veteran who wanted to maybe help raise some money

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1 Szele
2 for the Fund. Kind of liked what he saw in Dan
3 in general with the trading. Was maybe ready to
4 go to the next step of due diligence. And was
5 willing to get involved perhaps.
6 Q. What happened with him?
7 A. He heard about Dan's performance and I
8 told him about some of the violations. And he
9 said let's wait and see how he trades over the
10 next year or two.
11 Q. Can you identify anybody else?
12 A. I talked to an investor that Dan wanted
13 maybe to bring in. This guy Dan Stark.
14 Dan introduced him. He sounded
15 interested one day. Did some due diligence on
16 Dan. Then he wasn't interested.
17 Q. Beyond those two individuals, can you
18 identify anybody else?
19 A. There were many. They are all in the
20 e-mails.
21 Q. You've said that, but I want to know if
22 you can identify any of them.
23 A. Let me think. Different fund of funds
24 in Geneva, Switzerland. Different family offices
25 in Switzerland. Different potential investors in

1 Szele
2 the U.S. But mostly offshore.
3 Q. Those first two individuals you
4 identified, are those U.S. citizens?
5 A. Norman Stark is, but he has an offshore
6 fund I think. And Richard Lombardi is a French
7 citizen I think as well as a U.S. citizen. I
8 think. I can't be sure.
9 MR. SEAR: Let's take a short break.
10 (Recess)
11 BY MR. SEAR:
12 Q. I show you Mr. Szele, what we marked as
13 Zanger Exhibit 28, which is a set of documents
14 e-mailed to me this afternoon by one of your
15 counsel.
16 (Set of documents e-mailed to Thomas
17 Sear marked Zanger Exhibit 28 for
18 identification)
19 Q. It is not Bates stamped or numbered,
20 but if you could take a look at this document.
21 I'm going to direct you to the third page of the
22 document that purports to be at the bottom an
23 e-mail from you to Gia dated December 8, 2006.
24 A. You said fourth page, third page?
25 Q. Let me see. It is the third page of

1 Szele
2 A. I see it.
3 Q. She says, hello, Gia, per your request,
4 I have attached all the margin calls for client
5 ID 379326 since the account's inception on
6 1/14/05. Note that the tab titled Day Trading
7 Violations only includes day trading calls which
8 were not met. Please let us know if you will be
9 needing anything else. Regards, Janitza Lopez.
10 Did I read that correctly?
11 A. I see that.
12 Q. Gia then forwarded that e-mail to you
13 and Joe on Wednesday, December 13, 2006 at 8:12
14 a.m.?
15 A. Yes.
16 Q. And then do we have the list of the
17 margin calls and the two day trading calls that
18 were not met attached to the remainder of this
19 exhibit?
20 A. It looks like it, yes.
21 Q. If we look at the first page of the
22 attachment, you see there is a T/D which
23 presumably refers to a trade day of 1/6/06?
24 A. Yes.
25 Q. Do you have any knowledge or

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1 Szele
2 the exhibit.
3 A. Third page. Okay.
4 Yes, I see it.
5 Q. Is that an e-mail from you to Gia?
6 A. Yes.
7 Q. You sent this December 8, 2006?
8 A. I did, yes.
9 Q. Do you say to her in the e-mailed, Gia,
10 can you please list/e-mail me any and all (if
11 applicable) trading violations and/or margin
12 calls Dan's trading has caused since the
13 account's opening, please also list the amounts
14 and dates, thank you?
15 A. Yes.
16 Q. When you e-mailed this, did you
17 understand there was a distinction between
18 trading violations and/or margin calls?
19 A. I realized they are different things,
20 yes.
21 Q. Now, if we look to the second page, is
22 the first e-mail there an e-mail from Janitza --
23 I'm mispronouncing it, so let me spell it,
24 J A N I T Z A -- Lopez to Gia at Goldman Sachs
25 dated December 12, 2006?

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1 Szele
2 information which would in any way substantiate
3 that any of the trades referenced on this page
4 constituted violations of any rule or regulation?
5 A. I believe that these were violations of
6 Goldman Sachs.
7 Q. What do you base that on?
8 A. Based on her telling me these are
9 violations.
10 Q. Where did she say they were violations,
11 when you asked her for margin calls and/or
12 violations?
13 A. Yes, that's what I based it on, margin
14 calls and/or violations she says Janitza is
15 saying.
16 Q. You just told me there is a difference
17 between a margin call and violation.
18 A. There is.
19 MR. LANZA: Objection.
20 Q. Do you have any factual basis to
21 substantiate that any one of these items here
22 constitutes a violation of Goldman Sachs' rules
23 or any other rules?
24 A. If I hadn't already answered that, then
25 I don't know how to answer that.

1 Szele
2 Q. Okay. Good.
3 The next page, does that appear to be a
4 continuation of the trades referenced on the page
5 before it? That is additional information?
6 A. You mean does this --
7 Q. The page headed Account Titled
8 Independent Fund Limited. The first entry is
9 type H. Then there is a dollar sign. Then there
10 is a call \$391,412.
11 So that that appears to be a
12 continuation of the first entry on the previous
13 page?
14 A. Yes. It is much clearer in the
15 spreadsheet we have.
16 Q. Fine. Is that the key of H on most of
17 those items following Goldman Sachs' key
18 indicating most of them are house calls?
19 A. I believe so.
20 Q. A couple of them on that, actually
21 three appear to be New York Stock Exchange calls?
22 A. If that's what it says, yes. Yes.
23 Q. When you say that's what it says --
24 A. Yes, it says NY, NY, NY. It looks like
25 three there. Those would be NY SEC calls.

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1 Szele
2 Q. Let's look at the next two pages. They
3 are vertical columns headed Trade Date From
4 2/24/05 Up Through 12/14/05. Do you see that?
5 A. Yes.
6 Q. Am I correct the following two pages
7 which again have a vertical column, Independent
8 Fund, appear to relate back to follow the entries
9 of the previous two pages?
10 A. Yes, they appear to do that.
11 Q. Do you have any knowledge or
12 information as to whether any of the items on
13 these four pages reflect any violation of
14 anybody's rules or regulations?
15 A. Again, my understanding is that these
16 are all violations of the brokerage firm.
17 Q. What do you base --
18 A. At the very least.
19 Q. What do you base that on?
20 A. Based on what she has said, that they
21 are trading violations.
22 Q. You asked her for margin calls. Now
23 you are saying that they are trading violations.
24 My question to you is, what facts do you base any
25 of your testimony on that any of these --

1 Szele
2 A. A margin call can also be termed a
3 trading violation.
4 A day trading violation is a violation
5 in and of itself of some sort.
6 Q. My question is, do you have any facts
7 at all that would substantiate to any extent that
8 any of these items on these four pages, the trade
9 dates 2/24/05 to 12/14/05, constituted a
10 violation as opposed to a margin call that was
11 met?
12 A. If it is called a margin call, it is
13 called a margin call. That can still be a
14 violation of a margin call requirement.
15 Q. Do you have any facts that would
16 support the notion that any of these items on
17 these four pages were actual violations as
18 opposed to simply being margin calls that were
19 met?
20 A. The only facts I have are what they
21 sent me as far as in their e-mails.
22 Q. Fine.
23 A. Other than that, if there are rules and
24 regulations as well for the broker, that would be
25 Gia to explain that.

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1 Szele
2 Q. Am I correct, though, that in the
3 e-mail that Gia forwarded to you, the first
4 sentence reads, per your request I have attached
5 all the margin calls, is that right?
6 A. I see that.
7 Q. Is there any indication that all or any
8 of those margin calls are violations?
9 A. It doesn't say that here.
10 Q. It does indicate that the tab titled
11 Day Trading Violations only Includes day trading
12 calls which were not met, is that right?
13 A. That's right. So again what I was
14 pointing to earlier, day trading calls can also
15 be called day trading violations. Similarly --
16 Q. Doesn't she refer to the fact day
17 trading violations only include day trading calls
18 which were not met?
19 A. Which were not met, that's right.
20 Q. How many day trading calls that Dan
21 prompted were not met?
22 A. As far as I know, only these two.
23 Q. Okay. Do you have any other testimony
24 about this exhibit beyond what you told us, any
25 other information as to what it reflects?

1 Szele
2 A. No.
3 Q. Let me show you what we premarked as
4 Zanger Exhibit 8. Is this a copy of Goldman
5 Sachs' reports on the trading of Independent Fund
6 Limited as of August 31, '05 up through December
7 29, '06? Take your time.
8 A. That appears to be correct. August 31
9 through December 29, '06.
10 Q. Did you ever ask Dan to provide you
11 information concerning margin calls that he had
12 met?
13 A. I asked Dan from the very beginning,
14 and it's in the agreement, to keep me informed of
15 any and all margin calls, violations, anything
16 that could affect me, the Fund and potential
17 investment.
18 Q. Did you ever ask Gia to provide you or
19 IAM with any and all information concerning
20 margin calls that were met?
21 A. I don't know if I asked Gia or not.
22 Q. Do you have any recollection of doing
23 that?
24 A. I don't know. I discussed with Gia my
25 concerns about these violations. I expressed to

1 Szele
2 Q. I show you what's been marked as Zanger
3 Exhibit 29, a copy of documents provided by your
4 counsel by e-mail either earlier today or late
5 yesterday. I'm not sure which. It has Bates
6 numbers 6324 through 6361.
7 (Document Bates stamped 6324-6361
8 marked Zanger Exhibit 29 for identification)
9 Q. The Bates numbers 6324 through 6340
10 appear to be a copy of an agreement I guess with
11 R Capital Advisors LLC, RCA. Can you tell us
12 what that document is?
13 A. It is an engagement agreement between
14 R Capital Advisors and IAM.
15 Q. What was RCA supposed to do?
16 A. RCA was, among many things that are in
17 here detailed, was supposed to essentially help
18 raise capital. To formulate documents and bring
19 in capital, bring in investors.
20 Q. Did they perform properly under this
21 agreement?
22 A. I don't think they did.
23 Q. Okay. Who provided the funding for
24 this agreement on behalf of IAM?
25 A. Dan.

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1 Szele
2 her significant concern when I saw her memo.
3 Q. This is the memo in December of '06?
4 A. Yes.
5 Q. Looking at Zanger Exhibit 8, does that
6 reflect that the market value of the account as
7 of January 31, 2006 of the Fund was
8 \$9,432,086.91?
9 A. Where do you see that? Can you show --
10 Q. Page --
11 A. What's the date?
12 Q. January 31, 2006.
13 A. Okay. I see as of January 31, 2006.
14 Could you repeat the question.
15 MR. SEAR: If you could repeat the
16 question.
17 (Record read)
18 A. That appears to be correct.
19 Q. And am I right that the amount as of
20 February 28, 2006 was \$4,890,097.88?
21 A. Yes.
22 Q. That reflects the fact that Dan had
23 withdrawn money from the account that we talked
24 about earlier?
25 A. I would assume so, yes.

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1 Szele
2 Q. Am I correct that Dan provided a total
3 of funding of \$200,000 to IAM, working capital --
4 A. Total?
5 Q. Yes. Working capital of 150 and 50,000
6 additional for the RCA deal?
7 A. Dan provided 50,000 separately for this
8 RCA agreement, yes. And he put in the 100 and
9 the addendum amounts too, which were 50 and 50.
10 Q. How much total did he put in in terms
11 of working capital?
12 A. I'd have to check exactly. I mean, I'd
13 have to check -- I'd have to check if he put in
14 that last tranche or not. It's 150 or 200.
15 Q. Okay.
16 A. But that's -- the RCA was a completely
17 separate agreement between Dan and I, not a part
18 of any other --
19 Q. What was the separate agreement between
20 you and Dan concerning the RCA moneys?
21 A. That Dan was putting up -- it is in an
22 e-mail that I hope was provided -- assume
23 provided to you.
24 It was in an e-mail that said, and I
25 don't know the exact words, but Dan was putting

1 Szele
2 up the 50K -- it was his full risk to put that
3 up. And that it would come back to him via the
4 agreement of when the moneys are raised. Or if
5 they didn't perform, then -- and upon their
6 return of the capital, we would get it back to
7 Dan.
8 Q. Okay. There is another document here
9 dated October 20, 2006, Bates numbers 6341
10 through 6345. Do you know what that is?
11 A. 6341 you are starting?
12 Q. Yes.
13 A. Yes. This was to get assistance from a
14 company called J.C. Trident who would further
15 assist us with these document preparations. One
16 reason was that we thought it would speed it up
17 and the other reason was because Dan really
18 wasn't providing adequate docs for their
19 satisfaction, RCA's satisfaction.
20 Q. Did RCA forward some money to this
21 other entity?
22 A. No. RCA gave us back 7500 which a
23 portion of we gave to Trident.
24 Q. When you say a portion, did you give
25 the full --

1 Szele
2 Q. What does it reflect?
3 A. I believe it's the notes payable.
4 Outstanding notes payable I guess.
5 Q. Can you tell me as of what date?
6 A. I cannot, but I would assume from
7 January 30 when he sent it to us.
8 Q. January 30 of what year?
9 A. This year I think.
10 Q. Okay.
11 A. I would assume that's when he put it
12 together based on his fax.
13 MR. SEAR: Let me ask, and I am not
14 criticizing anybody at all, if counsel can
15 send me a more legible copy of it. That's
16 all.
17 MR. LANZA: Is it possible we can --
18 this is tiny.
19 THE WITNESS: You just have to blow it
20 up.
21 MR. SEAR: Okay.
22 Let me mark as Zanger Exhibit 30 a
23 one-page document.
24 (One-page document marked Zanger
25 Exhibit 30 for identification)

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1 Szele
2 A. I would have to pull out the contract
3 with Trident exactly how much he ended up
4 getting. He gave it back as well because he
5 decided Dan was too difficult to work with and
6 gave back the money. I would have to find that.
7 I don't know if it is in here or not. I am
8 looking for it.
9 Basically Dan -- it is not in here.
10 What Dan was giving us just didn't suffice for
11 any of these guys as far as giving us adequate
12 material to put into marketing documents.
13 Q. We talked earlier about the fact Dan
14 was not paid a portion of the management fee from
15 May of '06 through the end of the year. If you
16 calculated the amount that would be owing to him
17 per the agreements, would he have been owed an
18 additional \$58,000 approximately?
19 A. Approximately. I would have to check.
20 Of course I don't believe we owe him
21 anything based on what he owes us.
22 Q. Let's look at the next page on this,
23 Bates 6346. Do you know what that --
24 A. 6346. This is a spreadsheet put
25 together by our accountant, Frances Infurchia.

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1 Szele
2 Q. Can you identify that document?
3 A. Yes, this is what we put together per
4 Dan's request I think to give him a little
5 breakdown of, you know, the flow of moneys.
6 Q. Does that reflect the calculation of
7 the \$58,000 number we were talking about?
8 A. I believe that is -- yes, I believe
9 that 57,000 is that figure.
10 Q. You are right, it is \$56,368.47?
11 A. I am looking -- sorry. I am looking at
12 that number. But you are right, that is
13 56,368.47.
14 Q. Okay. Take a look at Bates number 6347
15 on the prior exhibit up through 6350 which
16 purports to be the 2006 tax return for
17 Independent Asset Management LLC.
18 A. Yes.
19 Q. Income on line 1A, it says gross
20 receipts or sales, \$616,341. Do you see that?
21 A. I do.
22 Q. Do you know what that refers to?
23 A. I don't. I don't know. You would have
24 to talk to the accountant about this stuff.
25 Q. Am I correct that this income tax

1 Szele
 2 return though reflects an ordinary business
 3 income loss of \$32,604?
 4 A. If that is what it says on there, yes.
 5 Where is that?
 6 Q. Line 22.
 7 A. Ordinary business income loss, negative
 8 32,604. That's what it says.
 9 Q. After the tax return, Bates number 6351
 10 and 52, do you know what those documents reflect?
 11 A. I don't. I don't recognize where this
 12 is from.
 13 Q. Okay.
 14 A. I don't know who generated this report
 15 or actually even what it's for.
 16 Q. Okay.
 17 A. I think this is probably from Joe.
 18 Q. Same for the 6352?
 19 A. Yes.
 20 Q. What do the documents following
 21 reflect, 6353 through 6361?
 22 A. Oh, I do know what this is. Dan was
 23 saying that we hid the \$100,000 from him, which
 24 is ridiculous. It is all accounted for. It was
 25 accounted for by our administrator, by

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1 Szele
 2 interactive brokers where the custody of this
 3 money was. Then it was audited by the auditor.
 4 It was just another one of Dan trying to say we
 5 hid something.
 6 Q. The \$100,000 involved what payment?
 7 A. The \$100,000 was the amount that I was
 8 going to trade. Dan had 300,000 total dollars
 9 transferred from Goldman Sachs to interactive
 10 brokers. He wanted to trade \$200,000 of it on
 11 his own futures account and he wanted me to trade
 12 \$100,000 of it on my own futures account in the
 13 Independent Fund to hedge, which I did
 14 successfully. I was actually up for him 3
 15 percent.
 16 This is all that trail showing Dan, no,
 17 there was no funny stuff going on.
 18 Q. Going back to Exhibit 30, which is that
 19 one-page document, I think I misspoke. I think
 20 the correct balance due, with all the caveats you
 21 gave, your position that you don't owe any money,
 22 but the calculation of the amount that would be
 23 owed, am I correct it is the \$57,000 number?
 24 A. Well, I marked 56,368.47 owed. I came
 25 up with that -- I believe it is coming up with a

1 Szele
 2 balance two different ways. The fact it is that
 3 close made it very real.
 4 Q. I take it what you did was you tried to
 5 calculate the amount of management performance
 6 fees that were calculated based upon the
 7 underlying agreement between the Fund and IAM and
 8 then the respective shares of Dan and IAM based
 9 upon the contract and the addendum relative to
 10 the 18 months and the amount that was paid to Dan
 11 to come up with this bottom line number?
 12 A. That sounds about right, yes.
 13 Q. Let me show you what's been marked as
 14 Zanger Exhibit 31.
 15 (E-mail chain from October of 2006
 16 marked Zanger Exhibit 31 for identification)
 17 Q. Which is an e-mail chain from October
 18 of 2006.
 19 What does this e-mail chain reference?
 20 A. This is -- I am just looking at the
 21 first page here. This is me asking Gia how they
 22 can authorize without the Fund's approval. There
 23 is a process that has to take place for money
 24 coming in to Goldman Sachs and out of Goldman
 25 Sachs which Dan completely disregarded twice.

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1 Szele
 2 What I am trying to ask Gia is how
 3 could this happen essentially.
 4 Q. And Dan --
 5 A. She is saying talk to Dan about it.
 6 Q. When did the two times occur?
 7 A. The first time I have to check the
 8 date. I have to check that. The second one was
 9 2006 here -- that was 2005 the first time. The
 10 second time was here.
 11 Q. Can you tell me approximately when in
 12 2005?
 13 A. I can't. That's why I would be happy
 14 to look it up. I don't know the exact date.
 15 Q. Do you recall how much money was
 16 involved?
 17 A. I don't recall how much money was
 18 involved. I don't.
 19 Q. Dan wired money into the Fund directly?
 20 A. Dan wired money directly into the Fund
 21 which he cannot do. Then he wired it directly
 22 out of the Fund, tried to, until Butterfield said
 23 you can't do that and then had to go through
 24 Butterfield back to him.
 25 And there was a redemption possibility

1 Szele
2 for me to take a redemption fee then which I
3 didn't take. I wanted to give him a break, don't
4 do this again, you can't do this.
5 Q. Did you approve the payment back to
6 him, the redemption?
7 A. I did approve it back to him and ended
8 up not charging him any fee. I told him don't do
9 it again.
10 Q. What happened with respect to the money
11 that he wired directly into the Fund in October
12 of 2006?
13 A. What happened is he tried to do it
14 again. He wired money in and wired it directly
15 back to him. I caught wind of it and started
16 asking the questions. That's when the
17 administrator also got wind of it and said no
18 more of that.
19 Q. Was the redemption back to him
20 approved?
21 A. The second one, was it approved? When
22 you say approved, did I let him get his money
23 back?
24 Q. Did the directors of the Fund approve
25 the payment back to Dan in 2006?

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1 Szele
2 A. I am trying to think of the process
3 that took place there.
4 Yes. I believe I approved it back to
5 him, yes.
6 Sorry, we did approve it. Again we
7 didn't charge him a redemption fee. We gave him
8 another break.
9 Q. Let me show you what we premarked as
10 Zanger Exhibit 32 and ask you if that refers to
11 another margin call that eventually was met.
12 (Document regarding margin call that
13 was met marked Zanger Exhibit 32 for
14 identification)
15 A. It looks like this one was one that he
16 met.
17 Q. Was there a day -- go ahead. Take your
18 time.
19 A. Okay.
20 Q. Was there a day trading call that
21 happened in November of 2006 in connection with
22 Dan's trading?
23 A. I think that was the day trading
24 violation.
25 Q. What happened with that?

1 Szele
2 A. November and December, two day trading
3 violations.
4 Q. What happened with respect to them?
5 A. What happened? I'm not sure what you
6 mean by what happened.
7 Q. Do you have any recollection of what
8 the facts and circumstances were relating to
9 these two matters?
10 A. Well, it's in the e-mails. I get an
11 e-mail from Gia again, not from Dan, saying that
12 there is this call violation. If you don't do
13 this and this and this by such and such day, you
14 are going to get shut down.
15 I tried to communicate with Dan and Dan
16 didn't communicate back.
17 Q. When you say you are going to get shut
18 down -- after the first day trading call was
19 made, did Gia indicate that there was going to be
20 a shutdown?
21 A. It is in the e-mails exactly what she
22 said would take place. I don't recall exact -- I
23 couldn't repeat exactly. But it's in the e-mails
24 what's going to happen in successive days if it
25 is not met.

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1 Szele
2 She called me. She called Dan. We
3 were trying to get Dan and Dan said I am not
4 going to cover this.
5 Q. Was there some shutdown after the
6 November 10 trading call?
7 A. Whatever it says in the e-mail.
8 Q. Do you have any recollection what
9 happened?
10 A. I have a recollection of what happened.
11 I don't have a recollection of the exact date she
12 said it would get shut down.
13 Q. Was that after the second call?
14 A. I believe it was after the second call
15 that that memo came in and how it would be shut
16 down if it wasn't met.
17 Q. When you say how it would be shut down,
18 what did she indicate in words or substance?
19 A. Specific days -- certain things had to
20 be met on specific days or else is the gist of
21 her e-mail.
22 Q. Okay. At that point in time what
23 effort did IAM make to go to another prime
24 broker?
25 A. Go to another prime broker. I don't

1 Szele
2 think we were thinking about going to another
3 prime broker at that point. We were trying to
4 figure out what Dan wants to do.
5 Q. Okay. Did you agree four, five days
6 after the second --
7 A. Sorry. Let me finish that thought. We
8 could have looked into going to any prime broker
9 and whether or not Dan would have done that, I
10 assume he may have or may have not. We weren't
11 close to that option of going to another broker.
12 Q. Four or five days after the second
13 call, in the communication from Goldman Sachs,
14 did IAM determine to liquidate the Fund?
15 THE WITNESS: Sorry. Could you repeat
16 his question.
17 (Record read)
18 A. I'd have to look at those questions
19 specifically as to four or five days. I didn't
20 decide to liquidate the Fund. Dan decided to
21 liquidate the Fund.
22 Q. Did you agree to the liquidation of the
23 Fund?
24 A. I did not agree to the liquidation of
25 the Fund.

1 Szele
2 the administrator.
3 Q. Why did it go back to the
4 administrator?
5 A. Because Goldman sent it back.
6 Q. Why did they send it back?
7 A. You would have to ask them. As far as
8 I know, it is customary procedure to send back
9 the money if an account is shut down.
10 Q. This was Goldman Sachs' decision?
11 A. I believe so, to send back the money --
12 it was their decision to shut the account down
13 for sure.
14 Q. When you say shut the account down,
15 what are you referring to?
16 A. They would not allow any more trading
17 in the account.
18 Q. Fine. For a period of time, correct?
19 A. As far as I knew. That was it for the
20 account based on his actions.
21 Q. Do you have any recollection of a
22 decision being made by IAM and Dan to liquidate
23 the Class Z shares fund?
24 A. I never even used the word liquidation
25 as far as I can recall. Never. To me it wasn't

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1 Szele
2 Q. Who did?
3 A. I don't think liquidation is the
4 appropriate word. Dan wanted his money back. He
5 is the investor. The account was shut down by
6 his actions. The money had to go back for legal
7 reasons to the Fund. Then you had to go through
8 a long process of figuring out the NAVs, the
9 accounting, so on and so forth.
10 Q. In connection with the liquidation?
11 A. I didn't approve any liquidation.
12 Q. Who did?
13 A. I don't think liquidation is the right
14 word. Like I said, Dan shuts the account down.
15 Q. When you say --
16 A. Goldman has to send the money back once
17 the account is shut down.
18 Q. Has to send what money back?
19 A. To the administrator. They can't have
20 money in an account if it is shutting down. They
21 have to get any remainder money out to where it
22 belongs, the account holder, which is the
23 Independent Fund, the administrative.
24 So the money has to go back to the
25 administrator. It does. It has to go back to

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1 Szele
2 a matter of liquidation. It was a matter of,
3 okay, you shut down this account. This money is
4 going back to the Fund. Let's sit down and talk
5 what to do next. That was my --
6 Q. Then what happened?
7 A. He didn't communicate with me.
8 Q. Then what happened? What did the Fund
9 do with the money?
10 A. Didn't communicate more with me.
11 What did the Fund do with the money?
12 The Fund kept the money and in tranches over time
13 based on the offering memorandum gave back bits
14 and pieces to Dan based on accounting, proper
15 procedures in how to give money back to an
16 investor.
17 Q. Was that pursuant to an agreed upon
18 liquidation?
19 A. It is not a liquidation. It's a
20 process by which money goes back to investors. I
21 think you are referring to the term redemption
22 instead of liquidation.
23 Q. Who agreed upon the redemption of the
24 Fund moneys?
25 A. Dan wanted his money out. So that was

1 Szele
2 considered -- he had to sign forms. He signed
3 the forms to redeem.
4 Q. Did IAM and the Fund agree he could
5 redeem the money?
6 A. It's not up to me to agree. It is
7 his -- it was his choice -- not choice. It
8 was -- once an investor gives a redemption
9 notice, the Fund has to do certain things through
10 their fiduciary responsibilities. And that's
11 what they did.
12 I never asked for a redemption. I
13 never asked for liquidation. I never asked for
14 anything else than to sit down and discuss with
15 Dan next steps. It is a procedural thing.
16 Q. Did IAM agree to the redemption by Dan?
17 A. No. The board of directors of IFL
18 agreed to do the proper procedures of giving an
19 investor back the money based on certain
20 procedural requirements.
21 Q. And what position did IAM take with
22 respect to that?
23 A. IAM is just the trading manager. So
24 IAM doesn't have much to say about it. It is the
25 Independent Fund Limited board of directors that

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1 Szele
2 make those --
3 Q. If I am understanding, Dan had the
4 right to redeem the shares and he did and IAM
5 didn't take any position, is that right?
6 A. No, that's not right.
7 Q. Okay. Then what happened?
8 A. Dan is an investor -- I am going to
9 give you my opinion, because that's all I can
10 give you what happened here.
11 My opinion is that Dan caused a
12 violation because he wanted to get his money out.
13 Whether or not he wanted to shut the account
14 down, I don't know. I think he wanted to get the
15 account shut down.
16 He had the account shut down by his
17 actions. The money goes back to the
18 administrator. The administrator has to
19 fiduciarily take responsibility in the Fund to
20 give back the money to Dan based on a formula
21 that is explained in the offering memorandum.
22 That's what took place.
23 Q. What position did IAM take vis-a-vis
24 this redemption by Dan and the Fund providing him
25 his moneys back?

1 Szele
2 A. IAM was of the position that there was
3 a series of breaches here. This wasn't done
4 properly by Dan.
5 Q. I am not -- we will get back to the
6 breaches that you've alleged. I am asking, what
7 position did IAM take with respect to the
8 redemption by Dan of his shares in the Fund in
9 and around December of '06?
10 A. Again, Independent Fund Limited makes
11 those decisions. It doesn't matter what IAM does
12 there. It is trading --
13 Q. It may or may not matter. I am asking
14 you what position if any IAM took with respect to
15 Dan redeeming his shares in the Fund in December
16 of '06. Did they take a position?
17 A. I'm just not -- I'm just not clear on
18 the question. The position was that we had to
19 wait for Independent Fund Limited to do the
20 proper steps and IAM is going to have to deal
21 with Dan on these issues per our agreement and
22 discuss what to do next.
23 Q. Did IAM object in any way to the
24 redemption that took place in the beginning of
25 December 2006 by Dan of the shares in the Fund?

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1 Szele
2 A. I told Dan, I think by e-mail, but I
3 have to check that, but I also made it very clear
4 that this was going obviously outside of the 5
5 million and we have to talk about this and talk
6 about what to do next.
7 I didn't get through to him most of the
8 time as I tried. You can see all the e-mails and
9 phone calls, whatever, IMs.
10 I was trying to get to him to discuss
11 all this and figure out next steps. We did make
12 it clear this was contrary to our agreement.
13 Q. Did you provide any notice of a
14 violation of the agreement to Dan in November,
15 December 2006 in writing?
16 A. There is an e-mail in writing around
17 that time from me to Dan. Four or five
18 sentences.
19 Q. What does it say?
20 A. I don't know. I would have to pull it
21 out.
22 Q. Do you recall the substance
23 approximately?
24 A. I wouldn't want to repeat anything in
25 there until I have it in front of me. It is very

1 Szele
 2 specific.
 3 Q. Why don't we take a break and ask your
 4 counsel and see if you can find it.
 5 (Recess)
 6 BY MR. SEAR:
 7 A. So the e-mail was on 11/10/06 from Dan
 8 to me.
 9 Q. I know what that e-mail is. My
 10 question is something else.
 11 A. That is the one I was referring to.
 12 Q. Good. Was there any e-mail in
 13 November, December of 2006 in which IAM or you
 14 stated to Dan in words or substance that he had
 15 violated the contract?
 16 A. I tried to reach him. I tried to reach
 17 him and I never heard back from him. So it was
 18 really more of an e-mail thing. I am trying to
 19 think if we even had a conversation. I don't
 20 think we even had a conversation because he never
 21 got back to me.
 22 Q. I wasn't asking you about a
 23 conversation. I was asking you about an e-mail.
 24 Was there an e-mail from you or someone
 25 on behalf of IAM in November or December 2006 in

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1 Szele
 2 which in words or substance you said to Dan he
 3 had violated the contract?
 4 A. In an e-mail?
 5 Q. Yes.
 6 A. I don't think so.
 7 Q. In any other writing?
 8 A. I don't think so, but I will check the
 9 IMs.
 10 Q. Do you recall any IMs in which that is
 11 stated?
 12 A. Sorry, I don't.
 13 Q. Do you recall telling Dan in November
 14 you understood his actions were well intentioned?
 15 A. At some point I mentioned that
 16 something is well intentioned. But it wasn't
 17 acceptable in either case.
 18 Q. Let me show you what we've marked as
 19 Zanger Exhibit 33.
 20 (E-mail chain marked Zanger Exhibit 33
 21 for identification)
 22 Q. The first e-mail here is an e-mail from
 23 you to Gia dated December 4, 2006 telling Gia,
 24 and I quote, "The Independent Fund will be
 25 liquidating this account. BFS, the admin, will

1 Szele
 2 shortly request that all funds be sent back to
 3 our account. Please let us know when the account
 4 is fully settled and funds are ready to be wired.
 5 Best, George Szele."
 6 A. I see that.
 7 Q. Had the Independent Fund determined as
 8 of December 4, 2006 to liquidate the account?
 9 A. I am just trying -- let me just think
 10 for a second.
 11 I was responding to Gia's e-mail to me
 12 below that where she says it will be placed on
 13 liquidation only status. What I am telling her
 14 is that get us the money back. The administrator
 15 is discussing the money back. And the
 16 Independent Fund has to obviously liquidate the
 17 account at Goldman Sachs because that is what
 18 they are forcing us to do. Dan's actions are
 19 forcing us to do.
 20 Because Goldman is saying they have to
 21 liquidate, we have to liquidate it via their
 22 request, Goldman Sachs' request.
 23 Q. Why didn't you put in this e-mail all
 24 about forcing? Why did you say the Independent
 25 Fund will be liquidating this account?

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1 Szele
 2 A. I am just using her words. She asked
 3 me.
 4 Force was established. She put it in
 5 her e-mail. Clearly his actions caused them to
 6 say something which was out of my hands.
 7 Q. Okay. Let me show you Zanger
 8 Exhibit 34.
 9 (E-mail chain marked Zanger Exhibit 34
 10 for identification)
 11 Q. You see this is an e-mail trail from
 12 December 1 up through December 14, 2006?
 13 A. Okay.
 14 Q. You see the e-mail, looks like it's
 15 from Joe dated December 13, 2006 at 2:04 p.m. on
 16 the first page?
 17 A. I see it.
 18 Q. You see it refers there to, in part,
 19 "We are finalizing our accounting for this class
 20 of shares so we can prepared" -- it says --
 21 "final redemption instructions to the Fund's
 22 underlying shareholders"? Do you see that?
 23 A. I do.
 24 Q. Who made the decision to do a final
 25 redemption of the Fund's shareholders?

1 Szele
2 A. No one. Joe is just not using -- I
3 don't think he meant to use those words. There
4 is no approval of any redemption whatsoever.
5 Q. Well, there was a redemption, right?
6 A. Dan requested -- I mean, I know what he
7 is saying here. He is just using his own
8 language. I mean, I can't control what Joe
9 wrote.
10 But the redemption, it wasn't approved.
11 It was forced by the fact that Dan's trades
12 caused Goldman to shut down the account. That is
13 what forces the issue. It is not one of these
14 voluntarily situations where the investor wants
15 to redeem, the manager says okay, here are the
16 terms and everything is all set. This is a
17 forced situation.
18 Q. If the money had gone back to the Fund,
19 if the Goldman Sachs account had been liquidated
20 and the money went back to the Fund, the Fund
21 could have invested that money somewhere else,
22 right? It could have gotten a new trader?
23 A. Not without Dan's approval. It is his
24 money.
25 Q. My point is, why did the Fund redeem

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1 Szele
2 Dan as opposed to the Fund continuing to hold the
3 money and having trades done elsewhere?
4 A. It is not clear to me what you are
5 asking. But let me say again that Dan's trading
6 actions caused the money to go back to the
7 administrator. Then the administrator -- then
8 Dan filled out the form or whatever he needed to
9 do to get back the money.
10 At that point it's the Fund
11 administrator's job to make sure that all the
12 NAVs are up to par, all the accounting takes
13 place properly. You know, they have to give back
14 certain tranches and the Fund can withhold
15 certain tranches per the bylaws for this amount,
16 this total amount.
17 I'm not sure what you mean why didn't
18 we go with some other trader. It is Dan's money.
19 He would have to want to go with some other
20 trader. That would have to be discussed. That
21 was something completely different from what we
22 were engaged to do together.
23 I'm really not certain of your
24 question.
25 Q. What position, if any, did IAM take

1 Szele
2 with respect to the redemption? If you know.
3 A. I really -- besides the fact that we
4 didn't approve of this because it dropped us
5 under 5 million, that's the position we took. We
6 were trying to get Dan to convey that and talk
7 about that.
8 Q. Did you take any action with the
9 administrator in terms of the redemption? Did
10 IAM object to the redemption?
11 MR. LANZA: Objection.
12 A. Again, it's the Fund's -- Independent
13 Fund's separate board of directors that makes --
14 Q. I understand that. I am asking you,
15 did IAM object to the redemption in any way?
16 MR. LANZA: Objection. I think he
17 answered it.
18 MR. SEAR: He hasn't even come close.
19 A. Did IAM object in particular or just in
20 general -- maybe you should rephrase it.
21 Q. Did IAM object to the redemption to
22 anyone?
23 A. IAM definitely was not comfortable with
24 this redemption in the sense it violated the
25 rules of the agreement between IAM and Dan.

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1 Szele
2 Q. I am not asking whether you were
3 comfortable or you felt good, what you had for
4 breakfast. All I am asking you is --
5 A. I am answering --
6 Q. In December of 2006, did IAM do
7 anything, anything at all to object to the
8 redemption of Dan's shares in the Fund?
9 A. I would have to look at my e-mails, my
10 notes, everything. I cannot answer any
11 differently than I have.
12 Q. As you sit here now, can you point to
13 anything that IAM did to object to that
14 redemption?
15 A. Not until I sit down and look at my
16 notes and e-mails.
17 Q. Will you do that and get back to us so
18 we may continue this questioning?
19 A. Sure.
20 Q. Let me show you what we previously
21 marked as Zanger Exhibit 12 and ask you to read
22 through that and tell us what it is, if you know.
23 More particularly, what it refers to, these
24 series of e-mails.
25 A. This is just my partner Joe getting

1 Szele
 2 passionate about, you know, various things that
 3 he thinks.
 4 You have to understand Joe is a -- he
 5 is just a very passionate guy. I don't think --
 6 between partners there is disagreement. This is
 7 what this was about. It is about as simple as
 8 that.
 9 He actually sent me e-mails and called
 10 me after this and said he apologized several
 11 times over. I took it as just the usual Joe
 12 ranting and raving when he is having a bad day
 13 type thing.
 14 Q. Did Goldman Sachs have a system which
 15 allowed you on a daily basis to access the
 16 trading by Dan?
 17 A. I could not access any trading during
 18 the day. I can only access the P&L reports at
 19 night. That was given to me the following day.
 20 I could not keep track of anything during the day
 21 really.
 22 I did have access to the ready
 23 platform. The problem is Dan constantly was
 24 trading. That wasn't at all accurately
 25 reflecting his activity during the day.

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1 Szele
 2 MR. LANZA: I am going to object to
 3 that question for the record. The question
 4 itself.
 5 Q. What was the ready platform?
 6 A. The ready platform is Goldman Sachs'
 7 platform, trading platform.
 8 Q. What does that mean, you had access to
 9 the ready platform?
 10 A. I had access to watch the actual
 11 positions of Dan to the degree they were being
 12 entered by him and his other brokers. It was
 13 very inaccurate. I basically ended up not
 14 looking at it because it wasn't accurate.
 15 The only thing that was accurate was
 16 the following day the P&L for the previous day in
 17 a report like the one you gave me here in an
 18 exhibit.
 19 Q. Would that show the number of calls
 20 that had been met?
 21 A. That wouldn't show anything about calls
 22 or violations as far as I know.
 23 Q. Did you ever ask Gia to be informed on
 24 a daily basis on the calls he was causing to be
 25 made and met?

1 Szele
 2 A. I had asked Gia to keep me informed as
 3 much as she could. Any way she wanted to.
 4 Q. What happened with that?
 5 A. You are going to have to ask her. She
 6 informed me when she did and she did in any of
 7 the other ones you saw in the memo.
 8 Q. That was at the end of '06?
 9 A. Her memo to me was at the end of '06.
 10 Q. Take a look at Zanger Exhibit 6,
 11 please, the offering memo.
 12 If you look at page 5, there is a
 13 paragraph midway down, it's the seventh paragraph
 14 down, the first two sentences. It says, the
 15 shares are available only to sophisticated
 16 persons who are willing and able to bear the
 17 economic risks of this investment and who are
 18 able to bear a substantial or complete loss of
 19 their investment in the shares of the Fund. The
 20 shares are speculative and involve a high degree
 21 of risk.
 22 Were those statements true with respect
 23 to the Class Z shares?
 24 A. This is standard boilerplate offshore
 25 fund text. I can't answer anything why -- I

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1 Szele
 2 can't answer that.
 3 This is standard disclosure stuff that
 4 would have to be in there whether it is, you
 5 know, any manager across any volatility spectrum
 6 across any risk profile. It is total standard
 7 legal language based on Bermuda law.
 8 Q. It may be totally standard legal
 9 language. My question to you is, were those two
 10 statements true with respect to the Class Z
 11 shares traded by Dan?
 12 A. I would say I don't know the answer to
 13 that question. I think that's -- I think it's a
 14 totally objective thing. I couldn't answer that
 15 question.
 16 Q. Well, did you have an understanding
 17 when you entered into the agreement with Dan back
 18 in 2004 that his trading involved a high degree
 19 of risk and was speculative?
 20 A. To me everything is speculative and a
 21 high degree of risk. Everything. My trading,
 22 his trading, everyone's trading. Trading
 23 involves risk and it's speculation.
 24 Q. Do you know what a chart trader is?
 25 A. Chart trader?

1 Szele
2 Q. Yes.
3 A. Chart trader. I heard the term. Yes.
4 Q. What is it?
5 A. I believe it's someone that trades off
6 of chart patterns and different types of
7 technical analysis.
8 Q. Did you understand when you entered
9 into the agreement with Dan in 2004 that he was a
10 chart trader?
11 A. Yes, sure.
12 Q. And did you understand that his trading
13 as a chart trader involved a substantial degree
14 of risk?
15 A. To me what he was doing -- as far as
16 risk, I found him to be -- how should I say it?
17 Not too far off the spectrum of what I deem is
18 appropriate or standard risk in these markets.
19 Maybe you would like me to comment on
20 whether or not I think he is a little bit of a
21 riskier manager than the average manager. Is
22 that more what you are asking for?
23 Q. I am asking for your information. What
24 do you think about that subject?
25 A. I will tell you this. He is a little

1 Szele
2 referred to there?
3 A. I have some idea. But to -- I would
4 have to find them to give you specific
5 information.
6 Q. What year did they take place in?
7 A. What year? I would have to look.
8 2005, 2006.
9 Q. How many such e-mail exchanges were
10 there?
11 A. I don't know. I would have to look to
12 count.
13 Q. Would these be in the documents
14 produced to us?
15 A. I would assume so.
16 Q. Can you give me any information about
17 the specifics of these e-mail exchanges in which
18 this woman was consistently irate over these
19 margin calls?
20 A. Well, I noticed irateness in her voice
21 a couple of times.
22 Q. I wasn't asking about her voice. I was
23 asking about a representation made to the court
24 about e-mail exchanges.
25 We have gone through -- I haven't done

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1 Szele
2 bit riskier than the average manager. That is
3 the best I can answer.
4 Q. Did you know that from the beginning?
5 A. I did.
6 Q. Let me read to you a statement that was
7 made in court to the judge in this case by your
8 counsel on October 4, 2007.
9 Mr. Lanza, page 7, line 5:
10 "MR. LANZA: Well, your Honor, it would
11 really be just requiring taking a look at the
12 e-mail exchanges from the prime broker to IFL,
13 specifically to Independent Asset Management,
14 saying you are in violation of our rules. You've
15 done this 125 times or saying --
16 "THE COURT: Do they say that?
17 "MR. LANZA: They do say that.
18 There are exchanges from a woman named
19 Gianina Arturo who works for Goldman Sachs who
20 was consistently irate over these margin calls
21 and they were."
22 Do you know what e-mail exchanges are
23 referred to in that statement?
24 A. I would have to find those e-mails.
25 Q. Do you have any idea what e-mails are

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1 Szele
2 it all myself. I will tell you my associate and
3 I have reviewed the entirety of the production in
4 this case. We haven't found one such e-mail.
5 If you could give us or counsel can
6 give us a Bates number or you can give us any
7 specificity on the month that these took place in
8 or who at IAM these e-mails were addressed to or
9 anything else that would help us find them, we
10 would like to have that information.
11 A. I will look for them.
12 Q. Okay.
13 A. I do want to say a violation -- a
14 margin call is a violation.
15 Q. Well, I think the testimony will
16 reflect that you've testified about every
17 different way on that. We have a different view.
18 We think there is no factual or legal basis for
19 the notion that a margin call that is met
20 constitutes a violation of anything.
21 A. If a margin call is not met, you are
22 shut down. That's a violation.
23 Q. No, I was saying that a margin call
24 that is met does not constitute a violation of
25 anything. If you have any proof to the contrary,

1 Szele
2 please give it to me.
3 A. I will go back to all the brokers and
4 ask them that. They will say -- it is semantics.
5 If you are not doing something that -- if you are
6 doing something you are not supposed to -- you
7 are not supposed to have a margin call. If you
8 are doing something you are not supposed to, it's
9 a violation.
10 Whether you call it day trading
11 violation or you could use any semantics you
12 want. You are not supposed to have a margin
13 call. Do you have the right to cover it right
14 away and be okay? Yes. If you don't cover it
15 right away, you are shut down. Futures,
16 equities, you name it. I have been through it
17 myself. I know all about that.
18 Q. How many times have you been shut down?
19 A. Never. I covered -- if I had a margin
20 call in the futures, I covered it right away. It
21 is still a violation.
22 Q. What do you base that on beyond what
23 you told us already? Anything?
24 A. I base it on what the brokers call it.
25 The brokers call it a violation.

1 Szele
2 says, however, subject to and without waiving any
3 objection, plaintiff submits the following
4 computations for the compensatory, economic
5 damages as alleged in the complaint:
6 Lost fees. As discussed below, because
7 defendant failed to fulfill his obligations under
8 the five-year agreement, plaintiff lost the
9 opportunity to earn both management fees and
10 performance fees for the AUM and the returns on
11 IFL's investments for the time remaining under
12 the term of the agreement.
13 What is the AUM?
14 A. Assets under management.
15 Q. Okay. Then it says, lost management
16 fees. IAM was entitled to an annualized 1
17 percent of AUM for the term of the agreement.
18 Pursuant to defendant's suggestion to place \$50
19 million into IFL and pursuant to Homstrom's
20 \$450,000 investment, IAM lost a minimum of
21 \$1,513,500 which excludes the likelihood that IAM
22 would attract additional investors.
23 Did I read that correctly?
24 A. Yes.
25 Q. Is that calculation based upon the

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1 Szele
2 Q. Beyond what you told us here today
3 already, do you have any other facts to add to
4 that?
5 A. No, not right now.
6 Q. Let me show you what we previously
7 marked as Zanger Exhibit 13 which is headed First
8 Supplement to Plaintiff's Response to Defendant's
9 First Set of Interrogatories. Let me ask you if
10 you have seen this before.
11 A. I would like to add one more thing
12 there. Whether or not it is a violation or not
13 technically, he was supposed to inform me of
14 anything and everything of that nature. The
15 liquidity -- it is all in the agreement. He
16 didn't not once. I think that is very important
17 to note.
18 What do I do here?
19 Q. First take a look at this document and
20 tell me if you have seen it before.
21 A. Yes.
22 Q. Did you provide the information that is
23 set forth in the document?
24 A. I believe so.
25 Q. If we turn to page 2, at the bottom it

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1 Szele
2 assumption that the defendant was somehow
3 obligated to place \$50 million into IFL?
4 A. I believe so.
5 Q. Let's read the next item, lost
6 performance fees. IAM was entitled to an
7 annualized 5 percent of all returns. Pursuant to
8 defendant's placement of \$50 million and
9 Homstrom's investment into IFL and in
10 consideration of defendant's historical trading
11 success, IAM lost a minimum of \$1,891,875 which
12 excludes the likelihood that IAM would attract
13 additional investors.
14 How is that minimum of \$1,891,875
15 calculated?
16 A. I would have to go back and look at
17 that.
18 Q. Is that calculated --
19 A. But I gave them a spreadsheet on very
20 conservative assumptions. That is how we came up
21 with that. I would have to look at the
22 spreadsheet to give you details.
23 Q. You can't do that now?
24 A. I don't have the spreadsheet here.
25 Q. Is this calculation based upon the \$50

1 Szele
 2 million number?
 3 A. No, I don't think so. But I would have
 4 to check.
 5 Q. Why does it say pursuant to the
 6 defendant's placement of \$50 million?
 7 A. I can't answer that. I'm not sure.
 8 Q. Do you have any other information as to
 9 the calculation of this amount beyond what you've
 10 told us?
 11 A. I don't. I'd have to pull up the
 12 spreadsheet.
 13 Q. The next item is lost trading revenue.
 14 Pursuant to defendant's failure to place the
 15 required amount into IFL in compliance with the
 16 agreement.
 17 What's the required amount as
 18 referenced there?
 19 A. I think it's referring to the fact that
 20 he didn't do -- he did it in two tranches and he
 21 did it not when he was supposed to.
 22 In other words, it took him four or
 23 five months to get 2 million in there and another
 24 3 million at the beginning which caused us about
 25 that amount.

1 Szele
 2 A. I don't think so. I would have to
 3 check. No, I think -- I believe --
 4 Q. Do you have any documentary backup for
 5 this \$20,000 cost?
 6 A. I am sure we have that.
 7 Q. What is it?
 8 A. I would have to check. First I have to
 9 check -- I think everything is on my spreadsheet
 10 actually. I have to check with that and I can
 11 give you any backup documentation on that.
 12 Q. Let's look at the next item, IAM's
 13 unpaid debts. In connection with defendant's
 14 actions, IAM incurred approximately \$690,595 in
 15 debts which were rendered unable to be repaid due
 16 to IFL being shut down under the prime broker and
 17 the Fund administrator.
 18 How was the 690,595 calculated or what
 19 does it represent?
 20 A. I believe it's essentially the debt
 21 that you saw on the other spreadsheet.
 22 Q. Is this debt that was incurred from
 23 2001 up until 2006?
 24 A. Some of it 2001, '2, '3, '4, '5 and '6.
 25 It encompasses the entire period.

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 1 Szele
 2 Q. Do you have any knowledge or
 3 information as to how the \$100,000 is calculated?
 4 A. That's what I just said. That's about
 5 100,000.
 6 Q. How do you get to 100 -- what's the
 7 calculation?
 8 A. I'd have to pull up the spreadsheet to
 9 go through all these numbers to comfortably
 10 respond to all these questions. I can't do it
 11 without the spreadsheet.
 12 Q. You don't have that with you?
 13 A. I do not.
 14 Q. Let's look at the next item,
 15 information technology costs. In connection with
 16 the management of IFL, IAM incurred approximately
 17 \$20,000 cost in implementing the information
 18 technology necessary to operate a hedge fund.
 19 When was that incurred?
 20 A. Again, I would have to look when
 21 exactly that was occurred. I believe it is over
 22 the course of the two years or year-and-a-half.
 23 I would have to look exactly.
 24 Q. Was some of this incurred prior to
 25 2005?

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 1 Szele
 2 Q. What expectation did IAM have in 2006
 3 of getting any of this debt repaid?
 4 A. If Dan hadn't breached the agreement,
 5 we would have repaid it very easily over the next
 6 five years. It would have been repaid.
 7 Q. Given the fact that the only investor
 8 that you obtained for the Class Z shares beyond
 9 Dan was Mr. Homstrom, who is a principal in IAM,
 10 what expectation did you have, if any, from '06
 11 going forward that you would attract any
 12 additional investor for '07, '08, '09 or 2010?
 13 A. Well, like I told Dan, the more money
 14 he puts in and the better he performs, the
 15 quicker we could raise money. I was waiting for
 16 him to put in more money like he said he would
 17 and I was waiting for him to perform better after
 18 that poor 2006 period.
 19 Q. Am I right that by the end of '06 he
 20 was still up on a net basis of trading profits
 21 from the beginning?
 22 A. I believe that's accurate, but he had a
 23 big drawdown, which he never said he'd have in a
 24 bull market. He said he would be down 5, 6, 7
 25 percent in a bear market maximum, peak to trough.

1 Szele
2 He ended up being down 30 percent in a bull
3 market. So vastly different from the
4 expectations he put down on paper to us.
5 Q. That makes him liable for \$690,000?
6 A. What makes him liable is that he ended
7 the contract before a five-year period which is
8 very customary to build a business with a
9 manager, to build a track record, to build the
10 whole marketing campaign.
11 Q. IAM's potential liability. IAM faces
12 potential legal liability to other IFL investors
13 in the amount of \$450,000. What is the reference
14 there to?
15 A. That's in reference to Mr. Homstrom.
16 Q. Am I correct Mr. Homstrom has never
17 asserted any claim against IAM?
18 A. Against IAM?
19 Q. Yes.
20 A. He wasn't happy about the loss. And he
21 is not happy about the loss.
22 Q. Fine. Did he ever assert any claim
23 against IAM?
24 A. I actually don't know -- I don't know.
25 I actually don't know right now how he feels

1 Szele
2 the top service providers writing us letters, for
3 example, about Dan's actions and in particular
4 saying you should consider getting rid of Dan or
5 we'll get rid of you.
6 Q. So am I correct that IAM's reputation
7 wasn't so good or was it real good?
8 A. IAM's reputation was quite good with
9 these service providers before Dan's actions,
10 yes.
11 Q. Putting aside the service providers
12 that got paid money to provide service, as of the
13 end of 2006, what was IAM's reputation with
14 investors based upon its track history from '01
15 to '06?
16 A. I can't answer that in great detail at
17 all. If I went through a due diligence process
18 right now with investors regarding Dan, it
19 wouldn't be pretty because of everything that he
20 did.
21 There isn't a person out there that's
22 honestly not going to tell you that he damaged us
23 tremendously. It is just across the board.
24 Q. Can you name one of those persons?
25 A. Yes, Robert Peacock -- if I got into

214
1 Szele
2 about that. You should maybe ask him.
3 Q. Okay. I'm not asking him how he feels.
4 I am asking if he ever asserted any claim against
5 IAM. I take it your answer is you don't know?
6 A. Up to now he has not to my knowledge
7 directly -- what he has talked about to counsel I
8 don't know.
9 Q. Moving costs. When did IAM move from
10 its offices?
11 A. February of '07.
12 Q. This is before you got the additional
13 investor in March of '07?
14 A. Well, again, that took -- that was a
15 many-month process to get that investor. But
16 February I think was the last month we were
17 actually in that office in Stamford.
18 Q. Then we have general damage to IAM.
19 Because defendant's actions shut down IFL, IAM
20 suffered tremendous reputational damage.
21 What reputation did IAM have as of 2006
22 that was damaged?
23 A. A pretty good reputation and a pretty
24 good mix of service providers from the top
25 offshore jurisdiction in the world with arguably

216
1 Szele
2 the details of people that -- if I gave them the
3 whole story on the case, they would be like this
4 guy killed you.
5 Q. I am not asking if you went and talked
6 to them now. I am asking you if you can name any
7 one person now as of this moment that would say
8 that IAM had a great track record, had a real
9 good reputation up to '06 and then Dan damaged
10 it?
11 A. I'm not sure if I am at liberty to say
12 a name just quite yet. Can I counsel with them
13 for one minute?
14 Q. Fine. If you can't tell me now, don't
15 tell me.
16 How did you calculate the \$10 million
17 in this portion of the --
18 A. I would have to go back to the
19 spreadsheet again. Essentially, I came up with
20 conservative numbers on the amount of money Dan
21 said he was going to put in there. I came up
22 with conservative numbers on his track record and
23 his performance. I came up with a conservative
24 number of investors we would have brought in over
25 time. A bunch of conservative assumptions and I

1 Szele
2 got to 20 million actually. I just said go with
3 10.
4 Q. Can you give us what any of these
5 conservative assumptions are as you sit here now?
6 A. Sure. I believe I used one-third of
7 his annual average track record. One-third of
8 his average annual return.
9 I used I believe 20 or 25 million and
10 he said he was going to start with 10 million. I
11 figured 20, 25 was pretty doable when he was
12 going to go up to 50.
13 I would have to go back to the
14 spreadsheet for others. If you take those two
15 numbers alone, you are close to 10 or above it
16 right there.
17 Q. Did Mr. Zanger guarantee any level of
18 performance in connection with his agreement with
19 IAM?
20 A. Did he guarantee any level of actual
21 trading performance?
22 Q. Yes.
23 A. No, he didn't guarantee anything as far
24 as trading performance. He did give me strong
25 guidelines.

1 Szele
2 would do for due diligence purposes to calculate
3 any sort of correlation matrix or any sort of
4 expected return number and I am taking one-third
5 of that and saying this is what we could achieve
6 if just his money would have been in there where
7 he said it would be. Not to mention the other
8 investors we might have brought in in year four
9 or five or whatever.
10 Q. Did IAM provide any value to the Class
11 Z shares in '05 or '06?
12 A. Did IAM provide any value? Depends how
13 you define value.
14 Q. Define it any way you want.
15 A. Tremendous value to the whole operation
16 through everything we did for Dan, including
17 holding his hand, finding him lawyers. You name
18 it across the board. We did everything for the
19 guy he wanted us to do except trade. Or we
20 attempted to do everything for him except trade.
21 That was his job and give us answers on marketing
22 material so we could market him.
23 Q. Did IAM generate any revenue for the
24 Fund in '05 or '06?
25 A. Well, we feel our input, time and

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1 Szele
2 Q. Going into the contract you understood
3 that Mr. Zanger might make a lot of money for the
4 Fund or might lose a lot of money?
5 A. Mr. Zanger likes to talk his track
6 record up significantly by pointing to a track
7 record at Effron which shows a 10,000 percent
8 return in one year.
9 Then he goes and shows me other things
10 in his Westwood U.S. fund which shows me hundreds
11 and hundreds percent return.
12 Then he goes and shows me and talks to
13 magazines about his other thousands of percent
14 returns. And you just Google him across the
15 board and you see thousands and thousands of
16 percent returns.
17 For me to assume one-third of his
18 actual average annual return is I feel quite
19 conservative.
20 Q. You are now calculating damages against
21 Mr. Zanger based upon an assumed level of
22 positive performance by him that was not
23 guaranteed in the contract, am I right?
24 A. I am taking an average annual return --
25 his historical actual return which every investor

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1 Szele
2 effort is generating revenue. It just happened
3 that he was with Ola the only investor in the
4 Fund. If that is how you view is generating
5 revenue, I guess that's how you define generating
6 revenue.
7 Q. Define it any way you want.
8 A. I just did. IAM did add tremendous
9 value and increased revenue in that sense.
10 Q. What --
11 A. The revenue based on the fees it
12 generated from the fund.
13 Q. Those are the moneys that IAM took. I
14 am asking if IAM actually helped the Fund obtain
15 any revenue. I am not asking you about the money
16 that IAM took from the fund.
17 A. I don't understand what you mean by --
18 Q. Dan traded, correct?
19 A. Right.
20 Q. That increased the amount of money in
21 the Fund, right?
22 A. Or decreased it.
23 Q. But on an overall net basis through the
24 two years Dan increased the amount of money in
25 the Fund?

1 Szele
 2 A. Right.
 3 Q. Did IAM do anything to increase any
 4 amount of money in the Fund over the two-year
 5 period?
 6 A. Yes, sure.
 7 Q. What money? Would you identify the
 8 money that it increased.
 9 A. Again, you are defining -- if you are
 10 defining money as did we place capital in there
 11 with him?
 12 Q. Capital, revenue, dollars.
 13 A. We didn't place -- our job was not to
 14 place our own capital in. Our job was to --
 15 everything else. To manage, to administrate, to
 16 oversee, to do marketing material, to find
 17 investors, to travel. Basically to hold his hand
 18 for an entire offshore business, which he wanted
 19 nothing to do with. He wanted to have it placed
 20 in his lap and that's it.
 21 MR. SEAR: I have no further questions
 22 of this witness at this time.
 23 There are a number of open items where
 24 the witness has represented he will provide
 25 me information or answers. There are also

1 Szele
 2 March 5, 2008
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 4 ERRATA
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 6 PAGE/LINE CHANGE/REASON

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1 Szele
 2 our requests we made the other day at Mr.
 3 Porco's deposition.
 4 So we reserve all our rights to recall
 5 Mr. Porco or this witness and we reserve our
 6 rights with respect to the documentation.
 7 For the moment, I have no further
 8 questions of this witness.
 9 (Time noted: 4:45 p.m.)

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1 Szele
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 8 GEORGE SZELE

9
 10 Subscribed and sworn to
 11 before me this day
 12 of 2008

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1
2 CERTIFICATE
3
4 STATE OF NEW YORK)
5) ss.
6 COUNTY OF NEW YORK)
7
8 I, Lisa Mango, a Shorthand Reporter and
9 Notary Public within and for the State of New
10 York, do hereby certify:
11 That GEORGE SZELE, the witness whose
12 deposition is hereinbefore set forth, was duly
13 sworn by me and that such deposition is a true
14 record of the testimony given by such witness.
15 I further certify that I am not related
16 to any of the parties to this action by blood or
17 marriage and that I am in no way interested in
18 the outcome of this matter.
19
20
21 -----
22 LISA MANGO
23
24
25

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10 17 104 Document Bates stamped
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11 18-20 (not marked)
12 21 107 E-mail dated 12/1/05 from
13 George Szele to Daniel
Zanger
14 22 112 E-mail from Gia
15 23 115 IM between George Szele and
16 Daniel Zanger
17 24 118 Document regarding house
18 call
19 25 122 E-mail dated 7/10/06 from
George Szele to Gia
20 26 124 E-mail from George Szele to
21 Daniel Zanger
22 27 133 E-mail dated 9/22/06 from
23 George Szele to Daniel
24 Zanger
25 28 157 Set of documents e-mailed
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